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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HERNAN G. OTERO, STEVEN B. HORN & JOHN TUMILTY

Appeal 2008-0343
Application 09/773,139
Technology Center 3600

Decided: June 18, 2008

Before TERRY OWENS, JOSEPH FISCHETTI, and MICHAEL O'NEILL,
Administrative Patent Judges.

OWENS, *Administrative Patent Judge.*

DECISION ON APPEAL

The Appellants appeal from a rejection of claims 8, 9, 19-23 and 28-39, which are all of the pending claims.

THE INVENTION

The Appellants claim an apparatus, method and software-encoded computer readable medium for computerized trading. Claim 8 is illustrative:

8. An apparatus for computerized trading comprising:
software encoded on a computer-readable medium and capable of execution by a computer, said software including:
- a first algorithm plug-in for implementing a trading strategy,
 - a second market plug-in for implementing a trading strategy,
 - an engine for providing services to said first and second plug-ins, whereby said first and second plug-ins are implemented in said engine in order to execute a trade,
 - a third algorithm plug-in,
 - a fourth market plug-in,
- whereby either of said third or fourth plug-ins may be substituted for either of said first plug-in or second plug-in respectively, in said engine, in order to execute a trade;
wherein said second market plug-in implements a first limit on trading volume applicable in a first market and said fourth market plug-in implements a second limit on trading volume applicable in a second market, the second limit on trading volume being different from the first limit on trading volume.

THE REFERENCES

Barber	US 6,173,292 B1	Jan. 9, 2001
Martyn	US 6,195,647 B1	Feb. 27, 2001
Kane	US 6,317,728 B1	Nov. 13, 2001
Freeny	US 6,594,643 B1	Jul. 15, 2003

David M. Brownstone and Irene M. Franck, *The VNR Investor's Dictionary* 150, 292 (Van Nostrand Reinhold 1981) (VNR).

9 *Encyclopedia of Microcomputers* 91-92 (Allen Kent & James G. Williams eds., Marcel Dekker 1992) (Kent).

The Handbook of Investment Technology 168-69 (Kevin J. Merz & Joseph Rosen eds., McGraw-Hill 1997) (The Handbook).

Paul Armstrong, “Exchanges close to a single stock market”, *The Times*, Sep. 24, 1999 (The Times).

Michael D. Sheimo, *Stock Market Rules* 148-50 (McGraw-Hill 2d ed. 1999) (Sheimo).

THE REJECTIONS

The claims stand rejected under 35 U.S.C. § 103 as follows: claims 8, 9, 19-21 and 23 over Kane in view of Kent and Sheimo; claim 22 over Kane in view of Kent, Sheimo and Barber; claims 28 and 35 over Kane in view of Kent and The Handbook; claims 29 and 36 over Kane in view of Kent, The Handbook and Sheimo; claims 30-32 and 37-39 over Kane in view of Kent, The Handbook, VNR and The Times; claim 33 over Kane in view of Kent, The Handbook and Freeny; and claim 34 over Kane in view of Kent, The Handbook and Martyn.

OPINION

We affirm the Examiner’s rejections.

Claims 8, 9, 19-21 and 23

The Appellants state that claims 8, 9, 19-21 and 23 stand or fall together (Br. 6). We therefore limit our discussion to one claim within that group, i.e., claim 8. *See* 37 C.F.R. § 41.37(c)(1)(vii)(2007).

Kane discloses a computer system that has inputs for receiving buy and sell data and “is capable of evaluating the buy/sell data and issuing

buy/sell orders in accordance with a plurality of buy/sell rules, i.e. ‘agents,’ stored in the system” (col. 1, ll. 9-12). The agents “contain rules and logic which evaluate market and specific equity behaviors” (col. 7, ll. 9-11). The Examiner relies upon Kane’s agents as corresponding to the Appellants’ algorithm plug-ins for implementing a market strategy (Ans. 4).

Kent discloses that “[t]he new trading activities of arbitrageurs, trading on slight differences in prices between markets, and of portfolio insurers, who are themselves trading to offset risk in existing portfolio positions, add to the volume of transactions in the securities markets” (p. 91).

Sheimo discloses (p. 149):

Immediate or Cancel (IOC) This order modifier is added to a limit that is at or close to an executable price. It specifies a maximum quantity, but it can be less. It says to buy (sell) 2,000 shares right now if you can. If you cannot, buy (sell) 1,500 or 1,000 shares and cancel the remainder of the order.

The Appellants argue that Sheimo’s order quantity is merely another trading strategy, not a limit on market trading volume that is applied to an aggregation of transactions and has effect beyond a single transaction (App. Br. 7-8; Reply Br. 1-2).

The Appellants’ claim 8 does not require a limit on market trading volume but, rather, requires a “limit on trading volume applicable in” a market. Sheimo’s immediate or cancel order has a limit on trading volume as to that order which is applicable in the market in which the order is placed. Hence, Sheimo meets the limit requirement in the Appellants’ claim 8.

We therefore are not convinced of reversible error in the rejection of claims 8, 9, 19-21 and 23.

Claims 28 and 35

The Handbook discloses a compliance module that checks portfolios against all investment restrictions before trade orders are sent to a trader, and alerts the trader of possible violations of defined prospectus limitations or SEC rules (p. 168).

The Appellants argue that The Handbook seems to pertain to rules of general applicability to all trading by an entity, rather than to rules for specific markets (App. Br. 9).

The Handbook's SEC rules are applicable to the markets regulated by the SEC. The Handbook would have indicated to one of ordinary skill in the art that markets in other countries likewise are subject to rules imposed by the corresponding regulatory agency. The Handbook, therefore, would have led one of ordinary skill in the art, through no more than ordinary creativity, to configure Kane's agents for implementing rules for each of those markets. *See KSR Int'l. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007) (In making the obviousness determination one "can take account of the inferences and creative steps that a person of ordinary skill in the art would employ").

Hence, we are not persuaded of reversible error in the rejection of claims 28 and 35.

Claims 29 and 36

The Appellants rely, with respect to claims 29 and 36, upon the argument set forth above with respect to claim 8 (App. Br. 9; Reply Br. 2-3). That argument is not convincing for the reasons given above regarding the rejection of that claim.

Claims 22, 30-34 and 37-39

Although additional references are applied in the rejections of claims 22, 30-34 and 37-39, the Appellants do not separately argue those claims and, accordingly, have not convinced us of reversible error in the rejections of those claims.

DECISION

The rejections under 35 U.S.C. § 103 of claims 8, 9, 19-21 and 23 over Kane in view of Kent and Sheimo, claim 22 over Kane in view of Kent, Sheimo and Barber, claims 28 and 35 over Kane in view of Kent and The Handbook, claims 29 and 36 over Kane in view of Kent, The Handbook and Sheimo, claims 30-32 and 37-39 over Kane in view of Kent, The Handbook, VNR and The Times, claim 33 over Kane in view of Kent, The Handbook and Freeny, and claim 34 over Kane in view of Kent, The Handbook and Martyn are affirmed.

AFFIRMED

tc

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